



MONTANA STATE PUBLIC DEFENDER

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MEMORANDUM

TO: Sue O'Connell, Legislative Services Division

FROM: Rhonda Schaffer, Director
Peter Ohman, Public Defender Division Administrator

DATE: July 13, 2020

RE: Representation in Child Welfare Proceedings

Based on a 2019 policy change, federal IV-E funds became available to offset a portion of the cost of providing legal representation to parents and children in child welfare proceedings. The Office of State Public Defender entered into an MOU with DPHHS in August 2019 and saw the first IV-E funds in early 2020.

OPD initiated a pilot program in Bozeman to frontload services for parents involved in the child welfare system. Initially the effort got off to a good start, but problems arose with the timing of public defense appointments. Montana's statutory structure results in counsel getting appointed after a petition has been filed, which can occur up to a week after a child is removed. A hallmark of high-quality legal representation in child welfare proceedings is early involvement including pre-petition advocacy.

OPD continued to try to get involved with cases upon removal but has had difficulties. Thus, we hope proposed legislation will come out of the interim which will set hearings within 72 hours or less of removal. This will help with parent engagement and allow OPD to better frontload services, which has proven to improve outcomes for families involved with the child welfare system.

Currently, in cooperation with the American Bar Association, OPD is attempting to identify a demonstration site under the Family Justice Initiative. The purpose of the demonstration site is to utilize IV-E funds to bolster the provision of high-quality parent and child legal representation at that location. OPD also needs to ensure there are multidisciplinary services available in the locale to help parents and children be successful. We hope to have a site identified and up and running before the end of the summer.

Please feel free to contact either of us if you have questions or need more information. You can reach Rhonda at 444-9049 (RSchaffer@mt.gov) or Peter at 444-5381 (POhman@mt.gov).

TITLE IV-E REIMBURSEMENT CONTRACT
CONTRACT NUMBER 21-DPHHS TITLE I-VE

This contract is entered into by and between the Office of State Public Defender, 44 West Park, Butte, Montana 59601 (hereinafter referred to as the Contractor, Office of State Public Defender, or OPD) and the Montana Department of Public Health and Human Services, P. O. Box 8005, Helena, Montana, 59604 (hereinafter referred to as the Department or DPHHS). This agreement and attachments constitute the entire agreement between the Department and the Office of State Public Defender regarding cases of child abuse and neglect, and supersedes all previous agreements, either written or verbal.

SECTION ONE

Purpose

This agreement establishes the financial relationship between the Office of State Public Defender and the Department for attorney administrative services provided by OPD in the representation of parents and children in child abuse and neglect cases. This agreement is for the express purpose of specifying how and under what conditions OPD may be reimbursed by the Department for a portion of the costs incurred by the Office of State Public Defender in providing such representation.

SECTION TWO

Statutory Authority

Montana Code Annotated § 41-3-425 requires courts to appoint the Office of State Public Defender to assign counsel for indigent parents, guardians, and other persons having legal custody of children involved in child abuse and neglect proceedings. Courts may also appoint the Office of State Public Defender to assign counsel for children or youth involved in any child abuse and neglect cases.

Federal law and regulations provide for the partial reimbursement of allowable costs for cases regarding children who meet the eligibility criteria of Title IV-E of the Social Security Act. The provision of legal representation and administrative services for parents and children in abuse and neglect cases involving IV-E eligible children is an allowable cost under federal law and regulations.

SECTION THREE

**Duties and Responsibilities of the Office of
State Public Defender**

1. The Office of State Public Defender shall provide independent legal representation for children and parents in child abuse and neglect proceedings under Mont. Code Ann., Title 41, Chapter 3.
2. The Office of State Public Defender shall work to provide high quality legal representation for the children and parents it represents in abuse and neglect cases. This may include, but is not limited to, engaging specialized attorneys, social workers, peer mentors, and therapeutic case managers to work with parents and children. This may also include representation of parents and children on other legal issues which directly relate to preventing children from being removed from their parent's care or being returned to their parent's care after removal. Examples of other legal representation may include, but is not limited to, guardianship issues, orders of protection, parenting plans, and landlord-tenant issues. The Office of State Public Defender understands and agrees that a multidisciplinary approach to parent and child representation in abuse and neglect

cases provide for better outcomes for children and families. Attorneys for parents and children will provide independent representation of their clients consistent with their ethical obligations as attorneys.

3. OPD shall keep an accurate record of the costs associated with providing representation in child abuse and neglect cases under Mont. Code Ann., Title 41, Chapter 3. These costs may include the salary, benefit and overhead costs of a public defender, social worker, case manager, the cost of private attorneys and the administrative costs of paralegals, investigators, peer partners or social workers that support an attorney providing parent or child legal representation in a child welfare proceeding.
4. The Office of State Public Defender shall, at the end of each quarter for which costs are to be claimed by OPD, submit to the Department a summary of those costs, in a format acceptable to the Department. Quarterly cost summaries shall be approved by signature of the OPD Director prior to submitting to the Department.
5. OPD shall retain records that support or document the costs claimed on the quarterly claim. Those records shall be made available to the Department or federal authorities upon request.

SECTION FOUR **Duties and Responsibilities of the** **Department**

1. The Department shall determine the statewide eligibility rate or penetration rate for IV-E funding for children involved in child abuse and neglect proceedings.
2. The Department shall review the costs for providing legal representation and administrative services submitted by OPD at the end of each quarter. The Department shall apply the statewide penetration rate to the costs submitted by OPD and submit the resulting claim to the federal government.
3. The Department shall, upon receipt of federal reimbursement, pay OPD its share of the reimbursement received.

SECTION FIVE **Disallowed Costs and Recovery of Improper or Erroneous Payments**

1. If, under state or federal review or audit, costs claimed by OPD and reimbursed by the Department are disallowed, those costs must be repaid by OPD to the Department within 30 days of written demand by the Department.
2. The Department shall be entitled to recover all payments erroneously or improperly made to OPD. OPD is responsible to refund the full amount of any erroneous or improper payment within 30 days of written demand by the Department.
3. If OPD fails to repay the Department within 30 days, the amount owed to the Department may be automatically deducted from any future payments to OPD. Any erroneous or improper payment received by OPD shall constitute a debt to the Department and may be recovered by the Department by any means provided by law or this contract.

4. OPD must notify the Department immediately if OPD believes it has received an overpayment or other erroneous or improper payment and shall promptly return the full amount of the improper or erroneous payment to the Department.

SECTION SIX
Effective Date and Termination

This agreement is effective beginning July 1, 2020 and shall terminate June 30, 2021 unless previously renewed in accordance with this section. This contract may be renewed for up to a total of seven (7) years if the Parties agree in writing prior to the expiration of the contract.

Any party may terminate this agreement at any time, with or without cause, upon no less than thirty (30) days written notice by certified mail or personal delivery of notice to the other party.

SECTION SEVEN
Signatures

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first written below.

Office of the State Public Defender

By: Rhonda Lindquist Date: 8/6/20
Rhonda Lindquist, OPD Director

Department of Public Health and Human Services

By: Sheila Hogan Date: 8/6/2020
Sheila Hogan, DPHHS Director